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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CECIL FRENCH, v. FIRST TRANSIT, INC.,	Plaintiff, Defendant.
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Case No.: 18-CV-1648-CAB-MSB
**ORDER PRELIMINARILY
APPROVING CLASS SETTLEMENT**
[Doc. Nos. 45, 46, 47]

Plaintiff Cecil French initiated this putative class action lawsuit in the Superior Court of San Diego County on May 2, 2018, alleging various wage and hour violations. Defendant First Transit, Inc. removed the case to this Court on July 19, 2018.

On April 17, 2019, Plaintiff French filed a First Amended Complaint adding Kathleen Breisacher as an additional plaintiff. On August 23, 2019, the Parties filed a Notice of Settlement with the Court in which they stated a formal settlement agreement would be prepared. On September 10, 2019, Plaintiffs filed a Second Amended Complaint adding Plaintiff French’s PAGA claims pending in state court to this action. Plaintiffs have now filed an unopposed motion for preliminary approval of the class action settlement. [Doc. Nos. 45, 46].

1 After considering Plaintiffs' motion, which includes the settlement agreement itself,
2 as well as the proposed class notice, it is hereby **ORDERED** that the Motion is
3 **GRANTED**.

4 It is further **ORDERED** as follows:

5 1. The definitions contained in the Settlement Agreement attached to the
6 Declaration of Sheldon A. Ostroff as Exhibit 2 in support of the motion for preliminary
7 approval of the Settlement in this Class Action are incorporated herein by reference.

8 2. The Court hereby preliminarily approves the Settlement Agreement and the
9 Settlement set forth therein as being fair, reasonable and adequate. The Settlement
10 Agreement is the result of arm's-length negotiations between experienced attorneys who
11 are familiar with class action litigation in general and with the legal and factual issues
12 presented in the instant Class Action in particular.

13 3. The Court finds, solely and exclusively for the purposes of the proposed Class,
14 that with regard to the Claims asserted by the Named Plaintiffs: (i) the number of Class
15 Members is so numerous that joinder is impracticable; (ii) common questions of fact and
16 law exist; (iii) the Named Plaintiffs' claims are typical of the Class Members' claims, and
17 (iv) the Named Plaintiffs and Class Counsel adequately represent the interests of the Class
18 Members. In addition, the Court finds that with regard to the Class Members, questions of
19 law or fact common to the Class predominate over questions affecting individual members,
20 and a class action is superior to other available methods. Certification of the Named
21 Plaintiffs' claims for settlement purposes is the best means for protecting the interests of
22 all the Class Members.

23 4. The Court has considered the pleadings and arguments made by the Parties in
24 support of the motion for preliminary approval of the Settlement Agreement, as well as the
25 declarations and exhibits submitted in support thereof, and finds that the proposed Class
26 defined in the Settlement Agreement is proper and should be certified for settlement
27 purposes as defined herein below. Solely for purposes of the proposed Settlement, the
28 Class is hereby conditionally certified pursuant to Fed. R. Civ. Proc. 23 as follows:

1 Defendant's non-exempt employees who drove a Para-transit bus route out of
2 Defendant's San Diego, California location during their employment with
3 Defendant during the Class Period (*i.e.*, May 2, 2014 through the date of entry
4 of this Order).

5 5. After reviewing the qualifications of the applicants for appointment of Class
6 Counsel, the Court does hereby approve Sheldon A. Ostroff of the Law Office of Sheldon
7 A. Ostroff and Daniel R. Shinoff of Artiano Shinoff as Class Counsel.

8 6. The Court is satisfied that the Named Plaintiffs do not have any conflicts of
9 interest with the absent Class Members and will be able to fairly and adequately protect
10 the interests of the Class Members. The Court therefore preliminarily approves Cecil
11 French and Kathleen Breisacher as class representatives for the Class.

12 7. The Court appoints American Legal Claim Services, LLC, as Settlement
13 Administrator. The costs of settlement administration shall be paid out of the Maximum
14 Settlement Amount pursuant to the terms of the Settlement Agreement.

15 8. The Court approves, as to form and content, the Class Notice attached as
16 Exhibit 2 to the Settlement Agreement and finds that the distribution of the Class Notice
17 as set forth in Section 6 of the Settlement Agreement: (a) meets the requirements of federal
18 law and due process; (b) is the best notice practicable under the circumstances; and (c) shall
19 constitute due and sufficient notice to all individuals entitled thereto. Notice of the
20 proposed Settlement shall be provided in accordance with the Settlement Agreement. Non-
21 substantive changes may be made to the Class Notice by agreement of the Parties without
22 further order of this Court.

23 9. All Class Members who do not opt out of the Class as described in the Class
24 Notice shall be bound by all determinations and the judgment in this Class
25 Action concerning the Settlement, whether favorable or unfavorable to the Class
26 Members.

27 10. Class Members shall not be required to submit a claim form to participate in
28 the Settlement and receive an Individual Settlement Payment.

1 11. Within sixty (60) calendar days of the mailing of the Class Notice, Class
2 Members objecting to the terms of the Settlement Agreement must do so in writing in
3 accordance with the Settlement Agreement. The written objection must be served on the
4 Parties' counsel of record and filed with the Clerk of the Court in accordance with the
5 Settlement Agreement and the directions in the Class Notice.

6 12. Within sixty (60) calendar days of the mailing of the Class Notice, Class
7 Members who wish to exclude themselves from the Settlement must submit a written
8 Request for Exclusion to the Settlement Administrator in accordance with the Settlement
9 Agreement and the directions in the Class Notice.

10 13. Any Class Member who does not exclude himself or herself from the Class
11 may enter an appearance in the Class Action, at his or her own expense, individually or
12 through counsel of his or her own choice. Any Class Member who does not enter an
13 appearance or opt out of the Class will be represented by Class Counsel.

14 14. A Final Approval Hearing, for purposes of determining whether the
15 Settlement Agreement should be finally approved, shall be held before this Court on
16 **March 13, 2020, at 2:00 p.m., in Courtroom 4C of the United States District Court,**
17 **221 West Broadway, San Diego, California 92101.** At the hearing, the Court will hear
18 arguments concerning whether the proposed Settlement of the Class Action on the terms
19 and conditions provided for in the Settlement Agreement is fair, reasonable and adequate
20 and should be finally approved by the Court. The Court will also hear at that time any
21 objections submitted by Class Members. The Court will also consider Class Counsels'
22 request for an award of attorneys' fees and costs, the Service Awards to be paid to the
23 Named Plaintiffs, and the payment of Settlement Administration Costs to the Settlement
24 Administrator.

25 15. Any Class Member who does not exclude himself or herself from the Class
26 may appear at the Final Approval Hearing and show cause, if any, why: (a) the proposed
27 Settlement of the Class Action should or should not be approved as fair, reasonable, and
28 adequate; (b) a judgment should or should not be entered thereon; (c) attorneys' fees and/or

1 costs should or should not be awarded to Class Counsel; and/or (d) the Named Plaintiffs
2 should or should not receive Service Awards. However, no Class Member, or any other
3 person, shall be heard or entitled to contest the approval of the terms and conditions of the
4 proposed Settlement Agreement, or, if approved, the Judgment to be entered thereon
5 approving the same, or, if awarded, compensation for the Named Plaintiffs, and/or
6 attorneys' fees and/or costs awarded to Class Counsel, unless that person has, no later than
7 sixty (60) days after the mailing of the Class Notice to the Class Members, filed a Notice
8 of Objection with the Court and served that Notice of Objection on counsel for the Parties,
9 and copies of any papers and briefs in support thereof explaining the basis of the objection
10 in accordance with the Settlement Agreement. All timely filed and served objections shall
11 be considered and ruled upon by the Court at the Final Approval Hearing. Any Class
12 Member who does not timely file and serve his or her Notice of Objection in accordance
13 with the Settlement Agreement shall be deemed to have waived such objection and shall
14 forever be foreclosed from making any objection to the fairness, reasonableness or
15 adequacy of the proposed Settlement contained in the Settlement Agreement, any award of
16 attorneys' fees and costs awarded to Class Counsel, and any Service Award to the Named
17 Plaintiffs, unless otherwise ordered by the Court.

18 16. The Parties shall file all papers in support of final approval of the Settlement
19 no later than twenty-eight (28) calendar days prior to the Final Approval Hearing.

20 17. Class Counsel shall file their motion for an award of attorneys' fees and costs
21 as part of the motion for final approval of the Settlement no later than twenty-eight (28)
22 calendar days prior to the Final Approval Hearing.

23 18. At the Final Approval Hearing, the Court shall determine whether the
24 proposed Settlement, any application for attorneys' fees or reimbursement of costs, the
25 Named Plaintiffs' Service Awards, and the Settlement Administration Costs shall be
26 approved.

1 19. The Court reserves the right to adjourn the date of the Final Approval Hearing
2 without further notice to the Class Members and retains jurisdiction to consider all further
3 applications arising out of or connected with the proposed Settlement.

4 20. As of the date of this Order, all dates and deadlines associated with the Class
5 Action shall be stayed, other than those pertaining to the administration of the Settlement.

6 21. In the event the proposed Settlement is not finally approved by the Court, or
7 for any reason the Effective Date does not occur, then the Settlement and all orders entered
8 in connection therewith shall be null and void and of no effect, and shall not be used or
9 referred to for any purposes whatsoever. In such event, the Settlement shall be withdrawn
10 without prejudice as to the rights of any and all Parties hereto.

11 It is **SO ORDERED**.

12 Dated: December 6, 2019



Hon. Cathy Ann Bencivengo
United States District Judge

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